

§ 105-130.5. Adjustments to federal taxable income in determining State net income.

(a) The following additions to federal taxable income shall be made in determining State net income:

- (1) Taxes based on or measured by net income by whatever name called and excess profits taxes.
- (2) Interest paid in connection with income exempt from taxation under this Part.
- (3) The contributions deduction allowed by the Code.
- (4) Interest income earned on bonds and other obligations of other states or their political subdivisions, less allowable amortization on any bond acquired on or after January 1, 1963.
- (5) The amount by which gains have been offset by the capital loss carryover allowed under the Code. All gains recognized on the sale or other disposition of assets must be included in determining State net income or loss in the year of disposition.
- (6) Any amount allowed as a net operating loss deduction under the Code.
- (7) Repealed by Session Laws 2001-327, s. 3(a), effective for taxable years beginning on or after January 1, 2001.
- (8) Repealed by Session Laws 1987, c. 778, s. 2.
- (9) Payments to or charges by a parent, subsidiary or affiliated corporation in excess of fair compensation in all intercompany transactions of any kind whatsoever pursuant to the Revenue Laws of this State.
- (10) The total amounts allowed under this Chapter during the taxable year as a credit against the taxpayer's income tax. A corporation that apportions part of its income to this State shall make the addition required by this subdivision after it determines the amount of its income that is apportioned and allocated to this State and shall not apply to a credit taken under this Chapter the apportionment factor used by it in determining the amount of its apportioned income.
- (11) The amount by which the percentage depletion allowance allowed by sections 613 and 613A of the Code for mines, oil and gas wells, and other natural deposits exceeds the cost depletion allowance for these items under the Code, except as otherwise provided herein. This subdivision does not apply to depletion deductions for clay, gravel, phosphate rock, lime, shells, stone, sand, feldspar, gemstones, mica, talc, lithium compounds, tungsten, coal, peat, olivine, pyrophyllite, and other solid minerals or rare earths extracted from the soil or waters of this State. Corporations required to apportion income to North Carolina shall first add to federal taxable income the amount of all percentage depletion in excess of cost depletion that was subtracted from the corporation's gross income in computing its federal income taxes and shall then subtract from the taxable income apportioned to North Carolina the amount by which the percentage depletion allowance allowed by sections 613 and 613A of the Code for solid minerals or rare earths extracted from the soil or waters of this State exceeds the cost depletion allowance for these items.
- (12) The amount allowed under the Code for depreciation or as an expense in lieu of depreciation for a utility plant acquired by a natural gas local distribution company, to the extent the plant is included in the company's rate base at zero cost in accordance with G.S. 62-158.
- (13) Repealed by Session Laws 2001-427, s. 4(b), effective for taxable years beginning on or after January 1, 2002.

- (14) Royalty payments required to be added by G.S. 105-130.7A, to the extent deducted in calculating federal taxable income.
- (15) through (15b) Repealed by Session Laws 2013-414, s. 34(a), effective August 23, 2013.
- (16) The amount excluded from gross income under Subchapter R of Chapter 1 of the Code.
- (17) **(Repealed effective for taxable years beginning on or after January 1, 2018.)** The amount excluded from gross income under section 199 of the Code.
- (18) Repealed by Session Laws 2006-220, s. 1, effective for taxable years beginning on and after January 1, 2007.
- (19) The dividend paid deduction allowed under the Code to a captive REIT, as defined in G.S. 105-130.12.
- (20) Repealed by Session Laws 2018-5, s. 38.2(d), effective June 12, 2018.
- (21) The amount of income deferred under section 108(i)(1) of the Code from the discharge of indebtedness in connection with a reacquisition of an applicable debt instrument.
- (22) The amount allowed as a deduction under section 163(e)(5)(F) of the Code for an original issue discount on an applicable high yield discount obligation.
- (23), (23a) Repealed by Session Laws 2013-414, s. 34(a), effective August 23, 2013.
- (24) The amount required to be added under G.S. 105-130.5B when the State decouples from federal accelerated depreciation and expensing.
- (25) **(Effective for taxable years beginning on or after January 1, 2016)** The amount of net interest expense to a related member as determined under G.S. 105-130.7B.
- (26) The amount of gain that would be included for federal income tax purposes without regard to section 1400Z-2(b) of the Code. The adjustment made in this subsection does not result in a difference in basis of the affected assets for State and federal income tax purposes. The purpose of this subdivision is to decouple from the deferral of gains reinvested into an Opportunity Fund available under federal law.
- (27) The amount of gain that would be included in the taxpayer's federal taxable income but for the step-up in basis under section 1400Z-2(c) of the Code. The purpose of this subdivision is to decouple from the exclusion of gains from the sale or exchange of an investment in an Opportunity Fund available under federal law.
- (28) The amount deducted under section 250 of the Code.
- (29) The amount deducted under section 965(c) of the Code.
- (b) The following deductions from federal taxable income shall be made in determining State net income:
 - (1) Interest upon the obligations of the United States or its possessions, to the extent included in federal taxable income: Provided, interest upon the obligations of the United States shall not be an allowable deduction unless interest upon obligations of the State of North Carolina or any of its political subdivisions is exempt from income taxes imposed by the United States.
 - (1a) Interest upon the obligations of any of the following, net of related expenses, to the extent included in federal taxable income:

- a. This State, a political subdivision of this State, or a commission, an authority, or another agency of this State or of a political subdivision of this State.
- b. A nonprofit educational institution organized or chartered under the laws of this State.
- c. A hospital authority created under G.S. 131E-17.
- (2) Payments received from a parent, subsidiary or affiliated corporation in excess of fair compensation in intercompany transactions which in the determination of the net income or net loss of such corporation were not allowed as a deduction under the Revenue Laws of this State.
- (3) Repealed by Session Laws 2003-349, s. 1.1, effective January 1, 2003.
- (3a) **(Effective for taxable years beginning before January 1, 2016)** Dividends treated as received from sources outside the United States as determined under section 862 of the Code, net of related expenses, to the extent included in federal taxable income. Notwithstanding the proviso in subdivision (c)(3) of this section, the netting of related expenses shall be calculated in accordance with subdivision (c)(3) of this section and G.S. 105-130.6A.
- (3a) **(Effective for taxable years beginning on or after January 1, 2016)** Dividends treated as received from sources outside the United States as determined under section 862 of the Code, net of related expenses, to the extent included in federal taxable income. Notwithstanding the proviso in subdivision (c)(3) of this section, the netting of related expenses shall be calculated in accordance with subdivision (c)(3) of this section.
- (3b) Any amount included in federal taxable income under section 78, 951, 951A, or 965 of the Code, net of related expenses.
- (4) **(Effective for taxable years beginning before January 1, 2015)** Losses in the nature of net economic losses sustained by the corporation in any or all of the 15 preceding years pursuant to the provisions of G.S. 105-130.8. A corporation required to allocate and apportion its net income under the provisions of G.S. 105-130.4 shall deduct its allocable and apportionable net economic loss only from total income allocable and apportionable to this State pursuant to the provisions of G.S. 105-130.8.
- (4) **(Effective for taxable years beginning on or after January 1, 2015 and expiring for taxable years beginning on or after January 1, 2030)** Any unused portion of a net economic loss as allowed under G.S. 105-130.8A(e). This subdivision expires for taxable years beginning on or after January 1, 2030.
- (4a) **(Effective for taxable years beginning on or after January 1, 2015)** A State net loss as allowed under G.S. 105-130.8A. A corporation may deduct its allocable and apportionable State net loss only from total income allocable and apportionable to this State.
- (5) Contributions or gifts made by any corporation within the income year to the extent provided under G.S. 105-130.9.
- (6) **(Repealed effective for taxable years beginning on or after January 1, 2016)** Amortization in excess of depreciation allowed under the Code on the cost of any sewage or waste treatment plant, and facilities or equipment used for purposes of recycling or resource recovery of or from solid waste, or for purposes of reducing the volume of hazardous waste generated as provided in G.S. 105-130.10.

- (7) **(Repealed effective for taxable years beginning on or after January 1, 2016)** Depreciation of emergency facilities acquired prior to January 1, 1955. Any corporation shall be permitted to depreciate any emergency facility, as such is defined in section 168 of the Code, over its useful life, provided such facility was acquired prior to January 1, 1955, and no amortization has been claimed on such facility for State income tax purposes.
- (8) The amount of losses realized on the sale or other disposition of assets not allowed under section 1211(a) of the Code. All losses recognized on the sale or other disposition of assets must be included in determining State net income or loss in the year of disposition.
- (9) With respect to a shareholder of a regulated investment company, the portion of undistributed capital gains of such regulated investment company included in such shareholder's federal taxable income and on which the federal tax paid by the regulated investment company is allowed as a credit or refund to the shareholder under section 852 of the Code.
- (10) Repealed by Session Laws 1987, c. 778, s. 2.
- (11) **(Effective for taxable years beginning before January 1, 2016)** If a deduction for an ordinary and necessary business expense was required to be reduced or was not allowed under the Code because the corporation claimed a federal tax credit against its federal income tax liability for the income year in lieu of a deduction, the amount by which the deduction was reduced and the amount of the deduction that was disallowed. This deduction is allowed only to the extent that a similar credit is not allowed by this Chapter for the amount.
- (11) **(Effective for taxable years beginning on or after January 1, 2016)** If a deduction for an ordinary and necessary business expense was required to be reduced or was not allowed under the Code because the corporation claimed a federal tax credit against its federal income tax liability for the income year in lieu of a deduction, the amount by which the deduction was reduced and the amount of the deduction that was disallowed.
- (12) **(Repealed effective for taxable years beginning on or after January 1, 2016)** Reasonable expenses, in excess of deductions allowed under the Code, paid for reforestation and cultivation of commercially grown trees; provided, that this deduction shall be allowed only to those corporations in which the real owners of all the shares of such corporation are natural persons actively engaged in the commercial growing of trees, or the spouse, siblings, or parents of such persons. Provided, further, that in no case shall a corporation be allowed a deduction for the same reforestation or cultivation expenditure more than once.
- (13) **(Repealed effective for taxable years beginning on or after January 1, 2016)** The eligible income of an international banking facility to the extent included in determining federal taxable income, determined as follows:
 - a. "International banking facility" shall have the same meaning as is set forth in the laws of the United States or regulations of the board of governors of the federal reserve system.
 - b. The eligible income of an international banking facility for the taxable year shall be an amount obtained by multiplying State taxable income as determined under G.S. 105-130.3 (determined without regard to eligible income of an international banking facility and allocation and apportionment, if applicable) for such year by a fraction, the

denominator of which shall be the gross receipts for such year derived by the bank from all sources, and the numerator of which shall be the adjusted gross receipts for such year derived by the international banking facility from:

1. Making, arranging for, placing or servicing loans to foreign persons substantially all the proceeds of which are for use outside the United States;
 2. Making or placing deposits with foreign persons which are banks or foreign branches of banks (including foreign subsidiaries or foreign branches of the taxpayer) or with other international banking facilities; or
 3. Entering into foreign exchange trading or hedging transactions related to any of the transactions described in this paragraph.
- c. The adjusted gross receipts shall be determined by multiplying the gross receipts of the international banking facility by a fraction the numerator of which is the average amount for the taxable year of all assets of the international banking facility which are employed outside the United States and the denominator of which is the average amount for the taxable year of all assets of the international banking facility.
- d. For the purposes of this subsection the term "foreign person" means:
1. An individual who is not a resident of the United States;
 2. A foreign corporation, a foreign partnership or a foreign trust, as defined in section 7701 of the Code, other than a domestic branch thereof;
 3. A foreign branch of a domestic corporation (including the taxpayer);
 4. A foreign government or an international organization or an agency of either, or
 5. An international banking facility.

For purposes of this paragraph, the terms "foreign" and "domestic" shall have the same meaning as set forth in section 7701 of the Code.

- (14) The amount by which the basis of a depreciable asset is required to be reduced under the Code for federal tax purposes because of a tax credit allowed against the corporation's federal income tax liability or because of a grant allowed under section 1603 of the American Recovery and Reinvestment Tax Act of 2009, P.L. 111-3. This deduction may be claimed only in the year in which the Code requires that the asset's basis be reduced. In computing gain or loss on the asset's disposition, this deduction shall be considered as depreciation.
- (15) **(Repealed effective for taxable years beginning on or after January 1, 2016)** The amount paid during the income year, pursuant to 7 U.S.C. § 1445-2, as marketing assessments on tobacco grown by the corporation in North Carolina.
- (16) The amount of natural gas expansion surcharges collected by a natural gas local distribution company under G.S. 62-158.
- (17) To the extent included in federal taxable income, 911 charges imposed under G.S. 143B-1403 and remitted to the 911 Fund under that section.
- (18) **(Repealed effective for taxable years beginning on or after January 1, 2016)** Interest, investment earnings, and gains of a trust, the settlors of which are two or more manufacturers that signed a settlement agreement with this State to settle existing and potential claims of the State against the

manufacturers for damages attributable to a product of the manufacturers, if the trust meets all of the following conditions:

- a. The purpose of the trust is to address adverse economic consequences resulting from a decline in demand of the manufactured product potentially expected to occur because of market restrictions and other provisions in the settlement agreement.
 - b. A court of this State approves and retains jurisdiction over the trust.
 - c. Certain portions of the distributions from the trust are made in accordance with certifications that meet the criteria in the agreement creating the trust and are provided by a nonprofit entity, the governing board of which includes State officials.
- (19) **(Repealed effective for taxable years beginning on or after January 1, 2016)** To the extent included in federal taxable income, the amount paid to the taxpayer during the taxable year from the Hurricane Floyd Reserve Fund in the Office of State Budget and Management for hurricane relief or assistance, but not including payments for goods or services provided by the taxpayer.
- (20) Royalty payments received from a related member who added the payments to income under G.S. 105-130.7A for the same taxable year.
- (21) through (21b) Repealed by Session Laws 2013-414, s. 34(a), effective August 23, 2013.
- (22) **(Repealed effective for taxable years beginning on or after January 1, 2016)** To the extent included in federal taxable income, the amount paid to the taxpayer during the taxable year from the Disaster Relief Reserve Fund in the Office of State Budget and Management for hurricane relief or assistance, but not including payments for goods or services provided by the taxpayer.
- (23) A dividend received from a captive REIT, as defined in G.S. 105-130.12.
- (24) **(Expiring for taxable years beginning on or after January 1, 2015)** Five percent (5%) of the gross purchase price of a qualified sale of a manufactured home community. A qualified sale is a transfer of land comprising a manufactured home community in a single purchase to a group composed of a majority of the manufactured home community leaseholders or to a nonprofit organization that represents such a group. To be eligible for this deduction, a taxpayer must give notice of the sale to the North Carolina Housing Finance Agency under G.S. 42-14.3.
- (25) The amount added to federal taxable income as deferred income under section 108(i)(1) of the Code.
- (26), (26a) Repealed by Session Laws 2013-414, s. 34(a), effective August 23, 2013.
- (27) The amount allowed as a deduction under G.S. 105-130.5B as a result of an add-back for federal accelerated depreciation and expensing.
- (28) **(Effective for taxable years beginning on or after January 1, 2016)** The amount of qualified interest expense to a related member as determined under G.S. 105-130.7B.
- (29) **(Effective for taxable years beginning on or after January 1, 2017)** To the extent included in federal taxable income, the amount paid to the taxpayer during the taxable year from the State Emergency Response and Disaster Relief Reserve Fund for hurricane relief or assistance, but not including payments for goods or services provided by the taxpayer.
- (30) The amount of gain included in the taxpayer's federal taxable income under section 1400Z-2(a) of the Code to the extent the same income was included in

the taxpayer's federal taxable income in a prior taxable year under subdivision (a)(26) of this section. The purpose of this subdivision is to prevent double taxation of income the taxpayer was previously required to include in the calculation of State net income.

(c) The following other adjustments to federal taxable income shall be made in determining State net income:

- (1) In determining State net income, no deduction shall be allowed for annual amortization of bond premiums applicable to any bond acquired prior to January 1, 1963. The amount of premium paid on any such bond shall be deductible only in the year of sale or other disposition.
- (2) Federal taxable income must be increased or decreased to account for any difference in the amount of depreciation, amortization, or gains or losses applicable to property which has been depreciated or amortized by use of a different basis or rate for State income tax purposes than used for federal income tax purposes prior to the effective date of this Part.
- (3) **(Effective for taxable years beginning before January 1, 2016)** No deduction is allowed for any direct or indirect expenses related to income not taxed under this Part; provided, no adjustment shall be made under this subsection for adjustments addressed in G.S. 105-130.5(a) and (b). G.S. 105-130.6A applies to the adjustment for expenses related to dividends received that are not taxed under this Part.
- (3) **(Effective for taxable years beginning on or after January 1, 2016)** No deduction is allowed for any direct or indirect expenses related to income not taxed under this Part; provided, no adjustment shall be made under this subsection for adjustments addressed in G.S. 105-130.5(a) and (b). For dividends received that are not taxed under this Part, the adjustment for expenses may not exceed an amount equal to fifteen percent (15%) of the dividends.
- (4) The taxpayer shall add to federal taxable income the amount of any recovery during the taxable year not included in federal taxable income, to the extent the taxpayer's deduction of the recovered amount in a prior taxable year reduced the taxpayer's tax imposed by this Part but, due to differences between the Code and this Part, did not reduce the amount of the taxpayer's tax imposed by the Code. The taxpayer may deduct from federal taxable income the amount of any recovery during the taxable year included in federal taxable income under section 111 of the Code, to the extent the taxpayer's deduction of the recovered amount in a prior taxable year reduced the taxpayer's tax imposed by the Code but, due to differences between the Code and this Part, did not reduce the amount of the taxpayer's tax imposed by this Part.
- (5) **(Repealed effective for taxable years beginning on or after January 1, 2016)** A savings and loan association may deduct interest earned on deposits at the Federal Home Loan Bank of Atlanta, or its successor, to the extent included in federal taxable income.

(d) Repealed by Session Laws 1987, c. 778, s. 3.

(e) Notwithstanding any other provision of this section, any recapture of depreciation required under the Code must be included in a corporation's State net income to the extent required for federal income tax purposes.

(f) Expired. (1967, c. 1110, s. 3; 1969, cc. 1113, 1124; 1971, c. 820, s. 1; c. 1206, s. 1; 1973, c. 1287, s. 4; 1975, c. 764, s. 4; 1977, 2nd Sess., c. 1200, s. 1; 1979, c. 179, s. 2; c. 801, s. 32; 1981, c. 704, s. 20; c. 855, s. 1; 1983, c. 61; c. 713, ss. 70-73, 82, 83; 1985, c. 720, s. 1; c.

791, s. 43; 1985 (Reg. Sess., 1986), c. 825; 1987, c. 89; c. 637, s. 1; c. 778, ss. 2, 3; c. 804, s. 3; 1991, c. 598, ss. 3, 10; 1991 (Reg. Sess., 1992), c. 857, s. 1; 1993 (Reg. Sess., 1994), c. 745, ss. 4, 5; 1995, c. 509, s. 50; 1996, 2nd Ex. Sess., c. 14, ss. 4, 10; 1997-439, s. 1; 1998-98, ss. 1(c), 4, 69; 1998-158, s. 5; 1998-171, s. 7; 1999-333, s. 2; 1999-337, s. 1; 1999-463, Ex. Sess., s. 4.6(b); 2000-140, s. 93.1(a); 2000-173, s. 19(c); 2001-327, ss. 1(d), (e), 3(a), (b); 2001-424, s. 12.2(b); 2001-427, ss. 4(b), 10(a); 2002-72, s. 14; 2002-126, ss. 30C.2(a), 30C.2(c); 2002-136, ss. 1, 4; 2003-284, s. 37A.3; 2003-349, s. 1.1; 2005-1, s. 5.7(b); 2005-276, ss. 35.1(b), 39.1(e); 2006-220, s. 1; 2007-323, ss. 31.18(a), (b); 2007-383, s. 5; 2007-397, s. 13(b); 2008-107, ss. 28.1(c), (d), (g), 28.25(b), 28.27(a); 2008-134, s. 2(b); 2009-451, s. 27A.6(c), (d); 2010-89, s. 1; 2011-5, ss. 2(a), (b), 3(a), (b); 2011-330, s. 11; 2012-79, s. 1.1; 2013-10, ss. 2(a), (b), 3(a), (b); 2013-414, s. 34(a); 2014-3, ss. 1.1(a), 14.3; 2015-6, s. 2.7; 2015-241, ss. 7A.3, 32.13(c), (d); 2016-5, ss. 1.9(a), 5.3(b); 2018-5, ss. 5.6(k), 38.1(b), (e), 38.2(d).)